

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.2054 OF 1998

Bank of India ...Plaintiffs

Versus

Mrs. Pramila V. Advani & Ors. ...Defendants

Shri A.S.Pal i/by Shri O.A.Das for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 03, 2007.

ORAL JUDGMENT:

1. The suit is listed under the caption of "Undefended Suits for Exparte Decree".

2. Heard the learned counsel appearing for the Plaintiffs. The Plaintiffs have filed the suit for recovery of sum of Rs.73,216/- together with interest thereon. According to the case of the Plaintiffs, the first Defendant requested the Plaintiffs to grant an Overdraft facility with the limit of Rs.3 lakhs against pledge of National Saving Certificates/Units of Unit Scheme 1964/Life Insurance Policies. The Plaintiffs granted overdraft facility against the pledge of the aforesaid securities in the limit of Rs.2 lakhs with a drawing limit of Rs.1 lac.

3. The first Defendant executed following documents in favour of the Plaintiffs:

- (i) A Demand Promissory Note dated 11th August, 1992,
- (ii) A letter of Continuing Security dated 11th August, 1992,
- (iii) A letter of Lien and set-off dated 11th August, 1992,
- (iv) A letter of pledge dated 11th August, 1992 and
- (v) Bill-Form dated 11th August, 1992

The securities mentioned as aforesaid were pledged by the first Defendant with the Plaintiffs.

4. The second Defendant executed a letter of continuing guarantee in favour of the Plaintiffs on 11th August, 1992 by which he guaranteed due repayment of the amount due and payable by the first Defendant under the overdraft facility. According to the case of the Plaintiffs, on 03rd December, 1997 the Advocate for the Plaintiffs called upon the Defendants to pay the amount. According to the Plaintiffs, the Defendants by their letter dated 14th June, 1995 acknowledged and confirmed the outstanding amount as well as execution of the documents as stated above.

5. The Plaintiffs have filed an affidavit of Shri J.P.Singh, an authorised Officer. The said affidavit is taken on record and marked "X" for identification. In the said affidavit it is stated that the documents relied upon by the Plaintiffs in the plaint are not

traceable. It is stated that diligent search was taken for tracing the documents. However, the original documents could not be located. In the said affidavit, it is contended that the Plaintiffs are, therefore, entitled to lead a secondary evidence of the said documents by producing xerox copies of the original documents executed by the Defendants. In view of the averments made in the said affidavit, permission deserves to be granted to the Plaintiffs to lead a secondary evidence.

6. The Plaintiffs have filed another affidavit of Shri J.P.Singh for proving the case made out in the plaint. The said affidavit is marked "Y" for identification and is taken on record. The xerox copies of the documents which are referred to earlier have been tendered on record. The said documents alongwith the list are marked "Z" (collectively) for identification. Alongwith the said documents, the Plaintiffs have produced a certified copy of the extract of account of the first Defendant which is duly certified as per the provisions of the Bankers' Books Evidence Act, 1891. The documents on which the Plaintiffs are relying upon are duly proved by the said affidavit.

7. In the affidavit (marked X) it is stated that after the suit was filed, a sum of Rs.33,374/- was

recovered by the Plaintiffs being the amount payable under the LIC policies which were pledged by the first Defendant with the Plaintiffs. Therefore, a deduction will have to be made of the said amount from the decretal amount. Accordingly, now the suit claim will be Rs.39,842.38/-. Though the Plaintiffs are entitled to decree in the said amount, the interest prayed for at the rate of 17.15 per cent per annum with quarterly rests cannot be granted and the interest will have to be fixed at the rate of 9 per cent per annum.

8. Hence, I pass the following order:

- (i) The Defendants are jointly and severally ordered and decreed to pay to the Plaintiffs a sum of Rs.39,842.38/- together with interest thereon at the rate of 9 per cent per annum from the date of institution of the suit till realisation or payment.
- (ii) The Defendants shall jointly and severally pay proportionate costs of the suit to the Plaintiffs.
- (iii) The Plaintiffs will be entitled to refund of court fees, if any, as per the rules.

(iv) Certified copy is expedited.

JUDGE